

REMARKS:

Claims 1, 3-9, and 11-16 are presented for examination. Claim 1 has been amended hereby. Claims 2 and 10 have previously been cancelled, without prejudice or disclaimer.

Reconsideration is respectfully requested of the rejection of claims 1 and 9 under 35 U.S.C. 112, second paragraph.

Initially, it is noted that the Examiner asserts that these claims are allegedly indefinite because there is no variable associated with a price of the stock in the following formula:

$$EPS = DPS_0 + \frac{Earnings_0 - N_o \times DPS_0 - Coupon}{N_o + \Delta N_{eff}},$$

In this regard, it is noted that this formula appears in claim 1, but not in claim 9. Therefore, for the sake of responding to this rejection, it will be assumed that the rejection is moot in connection with claim 9.

Moreover, it is noted that applicants do not necessarily concur with the Examiner with regard to the Examiner's analysis of these claims (even before amendment hereby) and the applicable rules and regulations.

Nevertheless, in order to expedite prosecution of the application, claim 1 has been amended hereby to even more clearly point out and distinctly claim the invention.

More particularly, as seen below, claim 1 has been amended to more explicitly recite: a) that the iteratively calculating a plurality of values of earnings per share associated with the entity is carried out based upon the input data and by changing the value of the stock price associated with the entity; and b) the connection between the value of the stock price and the variable ΔN_{eff} in the recited formula:

- “iteratively calculating a plurality of values of earnings per share associated with the entity based upon the input data and by changing the value of the stock price associated with the entity, wherein each value of earnings per share is calculated at least in part using the formula...” (emphasis added)

- “v) ΔN_{eff} equals the input change in the effective number of common shares outstanding, based at least in part upon each changed value of the stock price associated with the entity” (emphasis added)

Therefore, it is respectfully submitted that the rejection of claim 1 under 35 U.S.C. 112, second paragraph, has been overcome (and that the rejection of claim 9 under 35 U.S.C. 112, second paragraph, has been rendered moot).

Reconsideration is respectfully requested of the rejection of claims 1, 3, 4, 8, 9, 11, 12 and 16 under 35 U.S.C. 103(a) as allegedly being unpatentable over *Intermediate Accounting*, 5th Edition, hereinafter “Nikolai et al.” (of note, the cancellation of claims 2 and 10 has rendered their rejection moot).

It is respectfully submitted that applicants do not concur with the Examiner in the Examiner’s analysis of the claims of the present application and the Nikolai et al. reference.

In this regard, it is noted that the Examiner discusses, at paragraph 2 of page 2 of the August 10, 2007 Office Action, applicants’ prior argument in connection with patentable distinctions between the currently claimed invention and Nikolai et al.

More particularly, at paragraph 2 of page 2 of the August 10, 2007 Office Action the Examiner asserts the following:

1) “On page 1199, Nikolai teaches using an average market price of a common stock during a period to compute earnings per share. Nikolai also uses an end of the period market price of a common stock during a period to compute earnings per share. He repeats or iteratively calculates the earnings per share calculation using different stock prices.” (emphasis in original)

2) “In regards to the stock options and warrants calculation, it would have been obvious to one skilled in the art to modify the teachings of Nikolai and use stock prices other than average stock price because the substitution would have yielded predictable results to one skill [sic] in the arts.”

With regard first to point number one above, it is respectfully submitted that while Nikolai et al. may discuss an average market price of a common stock during a period as well as an end of the period market price of a common stock, Nikolai et al. nevertheless still fails to teach, show or suggest the claimed “iteratively calculating a plurality of values of earnings per share associated with the entity”.

This is because, as best understood, the average market price of a common stock during a period as well as an end of the period market price of a common stock are used by Nikolai et al. in an either or process, and that these two values are not used iteratively, as claimed.

In this regard, the Examiner’s attention is directed to Nikolai et al. at page 1199, lines 8-14:

If the average market price during the period is the same as or higher than the ending market price, the incremental shares for fully diluted earnings per share are the same as those used in computing primary earnings per share. However, if the end-of-the-period market price of the common stock is higher than the average market price during the period, this ending market price must be used in the treasury stock method to determine the assumed number of common shares reacquired with the proceeds from the assumed option exercise. (italic and bold emphasis removed from the original; underlined emphasis added)

Moreover, with regard to the second point above, it is believed that there is no suggestion in Nikolai et al. to make the modification proposed by the Examiner with regard to average stock price (this position of applicants’ is buttressed by the fact that Nikolai et al. does not “operate in a vacuum,” and that as best understood the average stock prices discussed by Nikolai et al. are required under their accounting process).

Therefore, it is respectfully submitted that the rejection of claims 1 and 9 (as well as claims 3, 4, 8, 11, 12 and 16, depending therefrom) under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. has been overcome.

Reconsideration is respectfully requested of the rejection of claim 5 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of U.S. Patent No. 6,061,662, hereinafter “Makivic”.

Initially, it is noted that applicants do not necessarily concur with the Examiner in the Examiner's analysis of the claims and Nikolai et al. and Makivic.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted that claim 5 depends from independent claim 1.

Thus, this claim 5 is submitted to be patentably distinct for at least the same reasons as independent claim 1 discussed above.

Therefore, it is respectfully submitted that the rejection of claim 5 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Makivic has been overcome.

Reconsideration is respectfully requested of the rejection of claims 6 and 7 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Official Notice concerning plotting of variables on a graph.

Initially, it is noted that applicants do not necessarily concur with the Examiner in the Examiner's analysis of the claims and Nikolai et al. and the Official Notice concerning plotting of variables on a graph.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted that each of claims 6 and 7 depends (directly or indirectly) from independent claim 1.

Thus, these claims 6 and 7 are submitted to be patentably distinct for at least the same reasons as independent claim 1 discussed above.

Therefore, it is respectfully submitted that the rejection of claims 6 and 7 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Official Notice concerning plotting of variables on a graph has been overcome.

Reconsideration is respectfully requested of the rejection of claim 13 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Makivic.

Initially, it is noted that applicants do not necessarily concur with the Examiner in the Examiner's analysis of the claims and Nikolai et al. and Makivic.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted that claim 13 depends from independent claim 9.

Thus, this claim 13 is submitted to be patentably distinct for at least the same reasons as independent claim 9 discussed above.

Therefore, it is respectfully submitted that the rejection of claim 13 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Makivic has been overcome.

Reconsideration is respectfully requested of the rejection of claims 14 and 15 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Official Notice concerning plotting of variables on a graph.

Initially, it is noted that applicants do not necessarily concur with the Examiner in the Examiner's analysis of the claims and Nikolai et al. and the Official Notice concerning plotting of variables on a graph.

Nevertheless, in order to expedite prosecution of the application, it will simply be noted that each of claims 14 and 15 depends (directly or indirectly) from independent claim 9.

Thus, these claims 14 and 15 are submitted to be patentably distinct for at least the same reasons as independent claim 9 discussed above.

Therefore, it is respectfully submitted that the rejection of claims 14 and 15 under 35 U.S.C. 103(a) as allegedly being unpatentable over Nikolai et al. in view of Official Notice concerning plotting of variables on a graph has been overcome.

Accordingly, it is respectfully submitted that each rejection raised by the Examiner in the August 10, 2007 Office Action has been overcome and that the above-identified application is now in condition for allowance.

Finally, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

For example, support for the amendment to claim 1 to the effect that iteratively changing the value of the stock price associated with the entity changes the values of earnings per share associated with the entity due at least in part to the changing value of the stock price changing ΔN_{eff} , which reflects the possibility based upon the economically reasonable analysis in light of market conditions of conversion, of the convertible security, may be found in claim 1, as filed; page 28, lines 1-16, and throughout the specification.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,
GREENBERG TRAURIG, LLP

Dated: January 10, 2007

By: /Matthew B. Tropper/
Matthew B. Tropper
Registration No. 37,457

Mailing Address:
GREENBERG TRAURIG, LLP
MetLife Building
200 Park Avenue
New York, NY 10166
Telephone: (212) 801-2100
Facsimile: (212) 801-6400